

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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| In the Matter of |) | |
| |) | |
| AMENDMENT OF THE COMMISSION'S |) | WT Docket No. 05-62 |
| RULES TO PROVIDE FOR FLEXIBLE USE |) | |
| OF THE 896-901 AND 935-940 MHz BANDS) | | |
| ALLOTED TO THE BUSINESS AND |) | |
| INDUSTRIAL LAND TRANSPORTATION |) | |
| POOL, AND OPPOSITIONS |) | |

To: The Commission

**COMMENTS OF KENWOOD USA CORPORATION
IN RESPONSE TO NOTICE OF PROPOSED RULE MAKING**

Kenwood USA Corporation (Kenwood), by counsel, hereby respectfully submits its comments in response to the Notice of Proposed Rule Making (the Notice), FCC 05-31, 70 Fed. Reg. 13143 *et seq.*, released February 16, 2003. The comment date was extended by the Commission (DA 05-1084, released April 14, 2005) to and including May 18, 2005, and therefore these comments are timely filed. For its comments, Kenwood states as follows:

1. Kenwood is a major manufacturer of quality communications products for the land mobile industry, including licensees in the 896-901 and 935-940 MHz band (referred to herein as the "900 MHz band") in the Business and Industrial Land Transportation (B/ILT) Service. Kenwood is concerned that the instant Notice proposal, unless carefully limited, will insufficiently protect incumbents in the B/ILT service from interference from overlay licensees using different architecture.

2. The Notice proposal generally proposes to expand the types of architecture allowed in these bands, permitting fixed and mobile uses generally. Licenses would be geographic area licenses. B/ILT incumbents are site-specific licensees. While the Notice asks a number of questions concerning the size of geographic areas to be relicensed, what the size of the channel blocks should be, and whether incumbents should be permitted to return site-specific licenses in order to participate in an auction for the new “flexible use” licenses, it would appear to Kenwood that the core issue in this proceeding is the means by which incumbent licensees should be protected, assuming that “overlay” geographic area licenses are to be permitted.

3. Kenwood is concerned that the 900 MHz band not suffer the same fundamental incompatibilities permitted to occur in the 800 MHz band, by mixture of different architectures and licensing schemes at 900 MHz . It is noted in this connection that the *Fifth Report and Order* in WT Docket No. 02-55, FCC 04-168, released August 6, 2004 rejected Nextel’s proposal to vacate the 900 MHz band, and has created an environment at 900 MHz that is similar to that which existed prior to the ongoing relocation at 800 MHz. High-site B/ILT architecture is mixed with low-site enhanced SMR architecture, and the instant proceeding would increase that circumstance. This concern was noted by the Association of American Railroads (AAR) in a

Petition for Reconsideration in Docket 02-55 filed December 17, 2004, and Kenwood shares that concern.¹

4. What measures are necessary in order to avoid fundamental incompatibility at 900 MHz and insure protection of incumbent B/ILT licensees in that band? In Kenwood's view, interference abatement requirements should be adopted for the 900 MHz band that are equivalent to those recently adopted for 800 MHz. These procedures must be in place in advance of any new CMRS entrants so that a repeat of the 800 MHz problem is not triggered. The Docket 02-55 *Fifth Report and Order* created a three-part interference avoidance scheme for 800 MHz licensees. First, the definition of "unacceptable interference" was created in order to provide an objective, "go-no-go" determination when interference is deemed to occur. Second, strict responsibility for eliminating unacceptable interference was placed on ESMR and cellular licensees. Third, the Commission required that ESMR and cellular operators notify public safety and CII licensees in advance prior to activating new cells. All three of these obligations should be placed on any "overlay" licensees in the 900 MHz band, except that the notification requirements should be across the board: all B/ILT licensees should receive the notifications, and all three protections should be for the

¹ AAR notes that currently at 900 MHz, there are channel pairs used for an Advanced Train Control System (ATCS) that are interleaved with channels licensed to others, including CMRS carriers, which creates a high probability of the precise cause of the public safety interference problems at 800 MHz. The instant proposal, which is weighted heavily toward allowing CMRS overlays at 900 MHz, threatens to elevate the interleaving of incompatible architectures. Notably, ATCS is a Critical Infrastructure Industry (CII) which must be protected. Other B/ILT licensees are no less deserving of interference protection.

benefit of B/ILT incumbent licensees equally. There should be no “special categories” of interference protection.

5. The protection values for 900 MHz B/ILT receivers should be adjusted so as to make the amount of interference protection commensurate with that provided to 800 MHz receivers. AAR recommends that 65 dB of adjacent channel rejection and 65 dB of intermodulation rejection for systems at 900 MHz be assumed. Kenwood agrees with these recommended standards at 900 MHz.

6. Kenwood is cognizant of the Commission’s predisposition toward encouraging competitive CMRS facilities and its goal of encouraging efficient use of existing allocations. However, the Commission must avoid at all costs any duplication of the 800 MHz interference problems. Those were created by permitting incompatible architecture in mature allocations. The 900 MHz band is a mature allocation, and there are already interleaved channels which accommodate both CMRS and B/ILT channels. The instant proposal risks a repeat of the problem at 800 MHz. At the very least, if the Commission proceeds with its proposal, absolute protection from additional interference must be provided. The formula for such has been painstakingly developed at 800 MHz and it is applicable to the 900 MHz band. Enhanced “best practices” guidelines are not sufficient, nor should interference avoidance or mitigation be left to private sector negotiation. Neither of those

alternatives was found sufficient in the 800 MHz proceeding, and there is no reason to believe that it would be sufficient at 900 MHz.

Therefore, the foregoing considered, Kenwood USA Corporation respectfully requests that the Commission not proceed with the Notice proposal to permit geographic overlay auctions on 900 MHz Business and Land Transportation Pool frequencies, except with the protections for incumbent site-specific licensees suggested herein.

Respectfully submitted,

KENWOOD USA CORPORATION

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May 18, 2005